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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1924

No. 460

RHEDEREI M. JEBSEN COMPANY, APPELLANT,

vs.

THE UNITED STATES

APPEAL FROM THE COURT OF CLAIMS

FILED JUNE 13, 1924

(30,425)

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[fol. 1] **COURT OF CLAIMS OF THE UNITED STATES**

RHEDEREI M. JEBSEN COMPANY

v.

THE UNITED STATES

I. HISTORY OF PROCEEDINGS

On June 29, 1923, the plaintiff filed its original petition.

On Nov. 19, 1923, on motion made therefor, the defendant was allowed to withdraw the general traverse and file a demurrer to said petition.

Defendant's demurrer was filed Nov. 21, 1923.

On February 19, 1924, on motion made therefor in open court, plaintiff was allowed to file an amended petition. Said amended petition is as follows:

II. AMENDED PETITION—Filed February 19, 1924

To the Honorable the Court of Claims:

The Claimant respectfully represents:

1. That Rhederei M. Jebsen Company was a duly organized and incorporated joint stock company under the laws of Schleswig-Holstein, Germany, and registered at the port of Apenrade, prior to the outbreak of the European War; that, in accordance with the provisions of the Treaty of Versailles and the plebiscite held thereunder, the said city of Apenrade and the province of Schleswig-Holstein [fol. 2] became a part of the kingdom of Denmark, and claimant is now an incorporated joint stock company under the laws of said kingdom.

2. That at the outbreak of the war in Europe in 1914, the said company then owned and had in commission an eighteen hundred ton merchant steamship known as the Johanne, of the gross tonnage of 1,530.88 register tons, net tonnage of 952.06, length of 77.96 meters, breadth 11.03 meters, and depth 5.51 meters, and built at Lubeck, Germany, in 1903. When war was declared between Germany and France and the other allied powers, the said steamship took refuge in the harbor at Manila, Philippine Islands, and remained there until the same was seized by the Government, as hereinafter set forth.

3. On information and belief, claimant alleges that on the date of the Declaration of War by the Congress of the United States against Germany, or within a few days thereafter, the said steamship Johanne, then in the harbor at Manila Bay, was seized, held and prevented from fully departing by the United States Government, by

its officers and agents, as the property of M. Jebsen, and held and used by said Government until the title was taken over as hereinafter alleged.

4. That on the 30th of June, 1917, Woodrow Wilson, as President of the United States, issued an executive order pursuant to the provisions of the Joint Resolution of Congress, approved May 12, 1917, wherein and whereby he ordered the United States Shipping Board to take over the possession and title of the steamship Johanne, a copy of which executive order is attached hereto and marked Exhibit "A," and by reference made a part of this petition. That a few days thereafter, the United States Shipping Board, pursuant [fol. 3] to said order, took possession of, and the title to, the said Johanne, then anchored at Manila Bay, in the Philippine Islands.

5. That thereafter, on December 12, 1917, the United States Shipping Board chartered said vessel to the Philippine Government, in whose service it remained until March 15, 1920, when the said Shipping Board, pursuant to the authority conferred upon it by law, sold and conveyed the said steamship Johanne to E. D. Aaby of Christiana, Norway for the sum of one hundred and seventy-four thousand six hundred ($174,600) dollars.

6. Claimant alleges that when the possession and title was taken over by the President and the Shipping Board, pursuant to the Joint Resolution of Congress, passed May 12, 1917 (40 Stat. L. 75), as aforesaid, an implied promise and agreement was made by the United States Government to pay to the owner of said vessel just compensation therefor. That said steamship Johanne, when seized by the United States Government, as aforesaid, was owned by claimant, and was reasonably worth the sum of one hundred and seventy-four thousand six hundred ($174,600) dollars.

7. That the reasonable value of the use of said vessel from April 6, 1917, to June 30, 1917, when the title was taken over as aforesaid, was the sum of twenty-three thousand ($23,000) dollars; and the defendant is justly indebted to the claimant for the use of said vessel in that sum.

8. Claimant is not advised as to whether or not the Secretary of the Navy appointed a Board of Survey to ascertain the value of said vessel at the time it was taken, and is unable to state whether or not any report of such value was made to the Secretary of the Navy.

[fol. 4] 9. No claim has ever been filed with the Shipping Board, or any other department of the Government, and claimant has not been paid the value of said vessel or any part thereof, nor for its use by this Government. No action has been taken with respect to said claim in Congress or any of the executive departments of the Government, and no suit has been brought on this claim in any other court.

10. Sometime after the seizure of the Johanne the name of said vessel was changed to "Iosco."

11. Claimant is the sole owner of the claim set forth in this petition. No assignment or transfer of said claim, or any part thereof, or any interest therein, has been made, and claimant is justly entitled to the amount herein claimed from the United States, after allowing all just credits and offsets; that the claimant is a citizen of the kingdom of Denmark, which accords to citizens of the United States the right to prosecute claims in its courts, and therefore has the privilege of prosecuting this claim.

Wherefore, claimant prays for a judgment in his favor against the United States, in the sum of one hundred and ninety-seven thousand six hundred dollars ($197,600) and for such other and further relief as to this Honorable Court may seem just and equitable.

H. H. McCormick, Attorney for Plaintiff. Daniel R. Williams, T. T. Ansberry, George T. Farrell, W. F. Norman, of Counsel.

[fol. 5] UNITED STATES OF AMERICA,
District of Columbia, ss:

H. H. McCormick, being duly sworn, says that he is attorney for the plaintiff above-named, duly authorized in the premises. That the plaintiff is a non-resident of this country, and now absent therefrom. That affiant is familiar with the facts on which the said claim is founded; and that the allegations set forth in the foregoing petition are true, as he verily believes.

H. H. McCormick.

Subscribed and sworn to before me this 19th day of Feby., 1924. F. C. Kleinschmidt, Asst. Clerk, Court of Claims. (Seal.)

EXHIBIT "A" EXECUTIVE ORDER

Whereas the following Joint Resolution adopted by Congress was approved by the President May 12, 1917:

"Joint Resolution Authorizing the President to take over for the United States the possession and title of any vessel within its jurisdiction, which at the time of coming therein was owned in whole or in part by any corporation, citizen, or subject of any nation with which the United States may be at war or was under register of any such nation, and for other purposes.

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President be, and he is hereby, authorized to take over to the United States the immediate possession and title of any vessel within the jurisdiction thereof, including the Canal Zone and all territories and insular possessions of the United States except the American Virgin [fol. 6] Islands, which at the time of coming into such jurisdiction was owned in whole or in part by any corporation, citizen or sub-

ject of any nation with which the United States may be at war when such vessel shall be taken, or was flying the flag of or was under register of any such nation or any political subdivision or municipality thereof; and through the United States Shipping Board or any department or agency of the Government to operate, lease, charter, and equip such vessel in any service of the United States, or in any commerce, foreign or coastwise.

"Sec. 2. That the Secretary of the Navy be, and he is hereby authorized and directed to appoint, subject to the approval of the President a board of survey whose duty it shall be to ascertain the actual value of the vessel, its equipment, appurtenances, and all property contained therein, at the time of its taking, and to make a written report of their findings to the Secretary of the Navy, who shall preserve such report with the records of his department. These finding shall be considered as competent evidence in all proceedings on any claim for compensation."

And whereas the following vessels were, at the time of coming into the jurisdiction of the United States owned in whole or in part by a corporation, citizen or subject of the Empire of Germany, a nation with which the United States is now at war, or were flying the flag of or under the register of the Empire of Germany, or of a political subdivision or municipality thereof:

Vaterland
Amerika
Kaiser Wilhelm II
President Grant
Pennsylvania
Bulgaria
[fol. 7] Princess Irene
Hamburg
Neckar
Bohemia
Rhaetia
Wittekind
Armenia
Adamsturm
Willehad
Serapis
Allemannia
Nassovia
Maia
Arnoldus Vinnen
Ottawa
Grunewald
Sachsenwald
Staatssekretar Solf
Arca (Lighter)
George Washington
Neptun
O. J. D. Ahlers
Prinz Waldemar
Loongmoon
Governor Jaeschke
Darvel
Princess Alice
Wiegand
Bochum
Carl Diederichsen
Coblenz
Esslingen
Lyeemoon
Pongtong
Sachsen
Suevia
Steinbeck
Elsass
Indra
Setos
Holsatia
Staatssekretar Kraetke
Borneo
Marudu
Tsintau
Andalusia

Kronprinzessin Cecile	Camilla Rickmers
President Lincoln	Clara Jebsen
Cincinnati	Elmsborn
Grosser Kurfurst	Johanne
Barbarossa	Mark
Friedrich der Grosse	Rajah
Rhein	Sambia
Konig Wilhelm II	Tubingen
Koln	Dalbek
Prinz Oskar	Magdeburg
Ockenfels	Matador
Arcadia	Kurt
Pisa	Andromeda
Prinz Joachim	Prinz Sigismund
Harburg	Savoia
Portonia.	Arni (Lighter)
Clara Mennig	Argus (Lighter)
Pommern	

[fol. 8] It is therefore ordered that through the United States Shipping Board there be taken over to the United States the possession and title of the aforementioned vessels. The United States Shipping Board is further hereby authorized to repair, equip and man the said vessels; to operate, lease or charter the same in any service of the United States, or in any commerce, foreign or coastwise; and to do and perform any and all things that may be necessary to accomplish the purposes of the Joint Resolution above set forth.

Woodrow Wilson.

The White House, 30 June, 1917. (No. 2651.)

[fol. 9] III. Defendant's Demurrer—Filed Nov. 21, 1923

(This demurrer was allowed to stand to the amended petition.)

Defendant demurs to the petition in the above-entitled case for the reasons:

First. It fails to state a cause of action against the United States.

Second. It fails to state a cause of action within the jurisdiction of this Court.

Robert H. Lovett, Assistant Attorney General. W. F. Norris, Special Assistant to the Attorney General.

IV. Argument and Submission of Demurrer

On February 19 & 20, 1924, the demurrer in this case was argued and submitted by Messrs. Hugh H. McCormick and George T. Far-

rell, for the plaintiff, and by Messrs. W. F. Norris and Herman J. Galloway, for the defendant.

[fol. 10] V. Order of Court Sustaining Demurrer and Dismissing Petition—Entered March 17, 1924

This case was submitted upon the defendant's demurrer to the plaintiff's amended petition. On consideration whereof, the court being of opinion that the demurrer is well taken, it is adjudged and ordered this 17th day of March, 1924, that the said demurrer be and it is sustained, and the amended petition is dismissed.

By the Court.

VI. Memorandum—Entered by the Court March 17, 1924

The court holds it has not jurisdiction, and its reasons for this holding are stated in the opinion in Deutsch-Australische Dampfschiffs-Gesellschaft Case, No. C-576, decided March 17, 1924. The fact alleged that plaintiff corporation is now a citizen of Denmark does not alter the situation.

[fol. 11] Court of Claims of the United States

[Title omitted]

VII. Opinion of the Court Referred to in Court's Memorandum—Decided March 17, 1924

Campbell, Chief Justice, delivered the opinion of the court:

This case is before the court upon the defendant's demurrer to the petition, which in substance avers: Plaintiff is a corporation organized and existing under the laws of Germany, and is a citizen of Germany, and at the times mentioned in the petition was engaged in the business of operating steamships, of which it was the owner of many, its principal office and place of business being at Hamburg, Germany. In or about the month of May or June, 1917, pursuant to authority granted by the joint resolution of May 12, 1917 (hereinafter set forth), the President of the United States "took over to the United States the immediate possession and control" of the plaintiff's steamers which then were within the jurisdiction of the United States or its insular possessions and which were the sole and exclusive property of plaintiff and in its possession. The names of the six steamers and the alleged fair and reasonable value of each is stated, and the aggregate value was $9,022,000.

Also it is alleged that certain stores and equipment belonging to the several steamers were also taken over, and that by the taking over

of the possession and control of the steamers in the manner stated and "thus appropriating the said steamers to its own use, enjoyment, and benefit," the United States impliedly agreed with plaintiff to pay plaintiff the fair and reasonable value of said steamers, and also for their stores and equipment, but that they have wholly failed and refused to pay the same. It is further averred that the survey required by section 2 of the joint resolution has been duly made and report thereof filed with the Secretary of the Navy. The claim is for the alleged aggregate value of the steamers besides the value of their coal, stores and equipment. A further claim of $10 per dead-weight ton per month for each steamer as the value of its use is made in the petition, but the plaintiff abandoned this claim, insisting, however, upon the alleged value of its property. It was explained in argument that the several steamers, with the exception of those in Cuban harbors, were all in American harbors at the outbreak of the war. They were merchant vessels which had sought asylum in these harbors and were left unmolested until the United States entered the war. There were fifteen other suits involving vessels of the alleged aggregate value of over $30,000,000 submitted with this one, besides a large number of similar cases heard at the same time.

[fol. 12] On April 6, 1917, the Congress adopted the joint resolution declaring the existence of a state of war between the United States and the Imperial Government of Germany. On that day some of the vessels in question were taken into possession and control by agents of the United States Government. On May 12, 1917, the Congress adopted a joint resolution as follows:

"Chap. 13. Joint resolution authorizing the President to take over for the United States the possession and title of any vessel within its jurisdiction, while at the time of coming therein was owned in whole or in part by any corporation, citizen, or subject of any nation with which the United States may be at war, or was under register of any such nation, and for other purposes.

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President be, and he is hereby, authorized to take over to the United States the immediate possession and title of any vessel within the jurisdiction thereof, including the Canal Zone and all territories and insular possessions of the United States except the American Virgin Islands, which at the time of coming into such jurisdiction was owned in whole or in part by any corporation, citizen, or subject of any nation with which the United States may be at war when such vessel shall be taken, or was flying the flag of or was under register of any such nation or any political subdivision or municipality thereof; and through the United States Shipping Board, or any department or agency of the Government, to operate, lease, charter, and equip such vessel in any service of the United States, or in any commerce, foreign or coastwise.

"Sec. 2. That the Secretary of the Navy be, and he is hereby, authorized and directed to appoint, subject to the approval of the

President, a board of survey, whose duty it shall be to ascertain the actual value of the vessel, its equipment, appurtenances, and all property contained therein, at the time of its taking, and to make a written report of their findings to the Secretary of the Navy, who shall preserve such report with the records of his department. These findings shall be considered as competent evidence in all proceedings on any claim for compensation."

By proclamation dated June 30, 1917, which incorporated the joint resolution of May 12 and mentioned by name 69 German ships, it was ordered by the President that "through the United States Shipping Board there be taken over to the United States the possession and title of the aforementioned vessels. The United States Shipping Board is further hereby authorized to repair, equip, and man the said vessels; to operate, lease, or charter the same in any service of the United States or in any commerce, foreign or coastwise; and to do and perform any and all things that may be necessary to accomplish the purposes of the joint resolution above set forth."

A question presented at the threshold is whether the Court of Claims has jurisdiction in the premises. The plaintiff contends that the allegations bring its case within the scope of section 145, Judicial Code, conferring power to hear and determine claims founded upon the Constitution or any law of Congress, or upon implied contract with the United States. The action is not founded upon the Constitution or a law of Congress. The joint resolution authorized the President to take title to the vessels and he did so. It does not in terms declare a liability of the Government or of itself create a right in plaintiff. It was said by Judge Richardson in Ludington's case, 15 C. Cls. 453, that to sustain a claim as one founded on a law of Congress there must be "a statute liability on the part of the Government." See Hukill case, 16 C. Cls. 532. In Hvoslef case, [fol. 13] 237 U. S. 1, 11, the statute authorized and directed the payment of certain claims. The act construed in the Medbury case, 173 U. S. 492, created the right to payment.

Where suits for compensation have been maintained because of the taking by the Government of private property for public use they were not founded upon the Constitution or the Fifth Amendment or a law of Congress, but upon an implied contract arising out of the circumstances of the taking. In United States v. Great Falls Mfg. Co., 112 U. S. 645, one of the earliest cases on the subject, the principle was announced, and it has been repeatedly reaffirmed. In United States v. North American Transportation & Trading Co., 253 U. S. 330, 335, it was said: "The right to bring this suit against the United States in the Court of Claims is not founded upon the Fifth Amendment, but upon the existence of an implied contract entered into by the United States." See Tempel case, 248 U. S. 121, 129; Peabody case, 231 U. S. 530, 539; Klebe case, — U. S. —, decided November 12, 1923 (67 C. Cls., 160). The circumstances of the case may rebut the implication of such a contract. Horstmann case,

257 U. S. 138, 146; Ball Engineering Co. v. White & Co., 250 U. S. 46, 57; Klebe Case, supra.

It was the action taken in virtue of the joint resolution that deprived plaintiff of its property, and the question is whether the circumstances gave rise to the implication of a contract of which the Court of Claims has jurisdiction. Manifestly the joint resolution was an exercise of the war power of Congress. It finds support in the constitutional provision that empowers Congress to declare war and to make rules concerning captures on land and water. Art. 1, § 8, cl. 11. See Stoehr v. Wallace, 255 U. S. 239, 242; Commercial Trust Co. v. Miller, 262 U. S. 51; Brown v. United States, 8 Cranch 110, 126; Miller v. United States, 11 Wall. 268, 305; Fischer v. Palmer, 259 Fed. 355. Salamandra Ins. Co. v. New York Life Ins. Co., 254 Fed. 852. Several of these cases deal with the trading with the enemy act, but that act granted broad powers to the Alien Property Custodian in dealing with enemy property, and if the property involved in this and similar suits had not been taken, as it was, it could admittedly have been taken by the Alien Property Custodian, in which event there would have been no jurisdiction in this court.

In Brown v. United States, 8 Cranch 110, the Circuit Court had condemned certain pine lumber seized as enemy property. The court's action was sought to be sustained upon the mere fact of the declaration of war. This the Supreme Court said was not sufficient, but that legislative action was essential to confer upon courts authority to condemn enemy property. Chief Justice Marshall said, page 122: "That war gives to the sovereign full right to take the persons and confiscate the property of the enemy wherever found, is conceded. The mitigations of this rigid rule, which the humane and wise policy of modern times has introduced into practice, will more or less affect the exercise of this right, but can not impair the right itself. That remains undiminished, and when the sovereign authority shall choose to bring it into operation, the judicial department must give effect to its will. But until that will shall be expressed, no power of condemnation can exist in the court." The court could not pronounce a sentence of condemnation in the absence of legislative authority so to do. In the instant case the court [fol. 14] is asked to order compensation for enemy property seized by authority of a legislative act that is silent on the question of jurisdiction. As already stated, the taking of private property for public use by the Government, and for which the Fifth Amendment requires compensation to be made, falls within the class of claims founded upon implied contract, and the duty imposed by this amendment is an essential element in raising the necessary implication of an agreement to pay.

But the limitations or restrictions of the Fifth Amendment do not affect the exercise of the war power conferred upon Congress when enemy property is taken. It was said in Miller v. United States, 11 Wall. 268, 304, that where the statutes were "an exercise of the war powers of the Government, it is clear they are not affected by the restrictions imposed by the Fifth and Sixth Amendments." (See Herrera case, 222 U. S. 558, 572.) It was added: "The Con-

stitution confers upon Congress expressly power to declare war, grant letters of marque and reprisal, and make rules respecting captures on land and water. Upon the exercise of these powers no restrictions are imposed. Of course the power to declare war involves the power to prosecute it by all means and in any manner in which war may be legitimately prosecuted. It therefore includes the right to seize and confiscate all property of an enemy and to dispose of it at the will of the captor. This is and always has been an undoubted belligerent right." See Morrisdale Coal Co. Case, 55 C. Cls., 310, 315; Salamandra Ins. Co. v. New York Life Ins. Co., 254 Fed. 852, 858; Fischer v. Palmer, 259 Fed. 355, 358.

In Green's Case, 10 C. Cls. 466, the facts were that the plaintiff, a citizen of the United States, was domiciled in Nashville, Tennessee. On the 16th day of February, 1862, while the capture of Nashville by the United States Army was imminent and expected, plaintiff went south with a large amount of his firm's moneys, which he took for investment. "While absent from his residence, he was not engaged in giving aid or encouragement to the rebellion, other than such as might arise from his voluntarily leaving his domicile and remaining within the Confederate lines and having commercial dealings with the people." When he left Nashville he was the owner of certain rent-producing buildings occupied by tenants and left in charge of his agent. The agent continued to collect the rents and care for the buildings until December, 1864, when they were seized by the special supervising agent of the Treasury as abandoned property, who collected the rents until July 8, 1865. The suit brought in October, 1870, was to recover these rents. The authority for taking the property was the act of July 2, 1864, 13 Stat. 375, which did not in terms prescribe a remedy. The opinion of the court, delivered by Judge Nott, says that "the case presents, with unusual clearness, the question whether the Government is judicially liable for any of the war measures resorted to in the late rebellion other than the liability created by the abandoned or captured property act," and states the question to be whether the Government is liable for the acts of its officers, done under color of its authority within the insurrectionary district, where the party injured was loyal and the circumstances were such as would give a citizen in time of peace a right of action against the Government under the mandate of the Constitution that private property should not be taken for public [fol. 15] use without just compensation. Declaring that it made no difference in the applicable rule whether the property was taken by the Army or the Navy, or by an officer of the Treasury, the court concluded that the Government was not liable upon implied contract. The court said (p. 471): "It is inevitable that a war must be prosecuted rigorously, and it is desirable that it be prosecuted as little to the injury of a government's own citizens as possible. In the prosecution of a war the discretion of a government, so far as the enemy is concerned, takes the place of ordinary constitutional restrictions or statutory provisions."

To relieve the rigor of the situation, the act of March 12, 1863, commonly called the abandoned or captured property act, was en-

acted. It was a beneficent piece of legislation, and, speaking of it, the court say in Klein's Case, 13 Wall. 128, 138: "There is, so far as we are aware, no similar legislation mentioned in history." It created a right where none existed before, Anderson Case, 9 Wall. 56, and authorized suits under specified conditions for the proceeds of sales of property that had been taken or seized as "enemy property." Although it was recognized, as was said in Lamar v. Brown, 92 U. S. 187, 195, that the United States, during the Civil War, occupied the position of "both belligerent and constitutional sovereign," it was also recognized, and uniformly held, that it was only in virtue of the act mentioned that even the loyal citizen, whether he resided in the one or the other of the sections, could assert in the Court of Claims compensation for his property that had been seized or appropriated as enemy property. The theory of an implied contract arising out of such seizure or appropriation finds no support in the decided cases. In Young's Case, 97 U. S. 39, 67, it was said of the British subject, in whose right the suit was brought: "Collie has been deprived of no right he ever had. Neither he nor any one similarly situated has ever been permitted to sue the United States in their own courts upon such a claim." See Klein Case, 13 Wall. 128, 137; Moore Case, 10 C. Cls. 375, 383; Haycraft Case, 22 Wall. 81, 92; Hijo Case, 194 U. S. 315.

In the Herrera Case, 43 C. Cls. 430, the plaintiff insisted that there was an implied contract, but this court held it had no jurisdiction under the Tucker Act, and quoted from the Hijo Case, 194 U. S. 315, 320, where it is said: "The vessel was therefore to be deemed enemy's property. It was seized as property of that kind, for purposes of war and not for any purposes of gain." The judgment was affirmed by the Supreme Court. In the course of their opinion, reference is made to the modern rules of war, stated by Kent (1 Kent, 92, 93), and which are in substance urged here, and the opinion proceeds: "If the record presented such a case, the question could be raised whether it presented one for judicial cognizance, even if a court could share the indignation which the learned commentator says all mankind would feel. It is certain that the court's power can not be enlarged by its emotions." Herrera Case, 222 U. S. 558, 572.

The second section of the resolution directed that a survey be made, the results of which should be competent evidence in any proceedings for compensation. This provision is entirely consistent with the idea that Congress intended to reserve for future determination any question of compensation. It falls short of conferring [fol. 16] power upon this court to determine it. It is significant when the policy of legislation during the war is considered that provision was made for action against the Government in all cases where it was intended to confer the right. Notwithstanding this court had the power to hear and determine suits against the Government conferred by section 145 of the Judicial Code, the numerous statutes authorizing requisitions and the taking of private property expressly designated the court where suits could be brought. Some of these conferred jurisdiction on the Court of Claims; some on District

courts, and some on both of these courts. Mr. Justice Brandeis, in the Pfitsch case, 256 U. S. 547, 552, says: "A survey of the war legislation permitting the seizure of property discloses that Congress has established three distinct jurisdictions for the purpose of suit against the United States for compensation." He mentions 25 different instances. The Government can not be sued without its consent, and the power to hear and determine suits against the United States should not and does not rest in mere inference or implication. It was said in Haycraft's case, 22 Wall. 81, 92: "A sovereign can not be sued in his own courts except with his consent. This is an action against the United States in its own Court of Claims. The appellant must, therefore, show that consent has been given to its prosecution." Every court must take notice of the limits of its jurisdiction. Reid case, 211 U. S. 529. It was suggested in argument in some of this class of cases that the Government took charge of the railroads under provisions of the national defense act, which did not prescribe a method for ascertaining compensation. But this action taken in an emergency was followed by a statute, which provided the necessary forum. The trading with the enemy act authorizing the Alien Property Custodian to take over and to dispose of enemy property did not permit suits by the enemy owners. Nor does the joint resolution of May 12 authorize suits by the German owners of the vessels. If this resolution can be made the basis of the suits they could have been instituted as soon as the President took action under it. Can it be supposed that the Government intended to open its courts to enemies seeking compensation for property taken from them while the war was yet flagrant? The history of the enactment rebuts any such idea. A joint resolution was introduced and referred in the Senate and in the House. As reported to the Senate by its committee, the joint resolution contained five sections. (Cong. Rec., vol. 55, pt. 2, p. 1572.) The first two sections contained all that was finally adopted. The three other sections purported to authorize suits to be brought by parties interested in the vessels and had provisions relative to suits. By section 5 the suits could be brought in the Court of Claims. All of sections 3, 4, and 5 thus reported were stricken out by amendment in the Senate. (Cong. Rec., vol. 55, pt. 2, p. 1575.) An amendment proposed by Senator Knox authorizing the President to "requisition" the vessels was voted down. (Cong. Rec., vol. 55, pt. 2, pp. 1575, 1576.) The joint resolution as amended was adopted by the Senate, and in that shape was sent to the House, where it was taken up, superseding the one on its calendar, and passed as it came from the Senate. This definite action by the Senate, concurred in by the House, confirms the view that there was no intention to authorize [fol. 17] suits in the Court of Claims on account of the seizure of these vessels. See Pfitsch case, supra.

The plaintiff argues that the United States did not confiscate or intend to confiscate the property and that the taking must consequently be referred to the power of eminent domain with a duty to make compensation. What we have said sufficiently answer this contention. We do not think it necessary to assert that there was a

confiscation, nor to deny that the Congress may have intended that the United States would at some time account for the vessels or their ascertained value. If this court is without jurisdiction, its conclusions upon these questions would probably be coram non judice. The result, however, in this case, would not be altered if the proper conclusion were that the taking over of the vessels amounted to a sequestration of them. The act authorizing their seizure did not confer power on the Court of Claims to entertain the present suit, nor does its general jurisdiction extend to suits of this kind. It was said in Haycraft's case, supra: It is for Congress, not the courts, to determine whether this jurisdiction shall be extended and other remedies provided."

The demurrer should be sustained. And it is so ordered.

Graham, Judge; Hay, Judge; Downey, Judge, and Booth, Judge, concur.

[fol. 18] VIII. Plaintiff's Application for Appeal—Filed May 12, 1924

Now comes the plaintiff in the above entitled cause and moves the Court for the allowance of an appeal from the judgment of this Court, entered herein on the 17th day of March, 1924, to the Supreme Court of the United States.

H. H. McCormick, Attorney for Plaintiff.

IX. Order Allowing Plaintiff's Application for Appeal—Entered May 19, 1924

On this 19th day of May, 1924, it is ordered by the court that the plaintiff's application for appeal be and the same is allowed.

[fol. 19] [Title omitted]

Clerk's Certificate

I, F. C. Kleinschmidt, Assistant Clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the argument and submission of case on demurrer; of the order of court sustaining the demurrer and dismissing the amended petition and of the memorandum of the court filed therewith; of the opinion of the court referred to in the court's memorandum; of the plaintiff's application for appeal and of the order of the court allowing said application.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at Washington City this Twenty-second day of May, A. D., 1924.

F. C. Kleinschmidt, Assistant Clerk Court of Claims. (Seal of Court of Claims.)

Endorsed on cover: File No. 30,425. Court of Claims. Term No. 460. Rhederei M. Jebsen Company, appellant, vs. The United States. Filed June 19th, 1924. File No. 30,425.

(3888)